

Case No.: S168047

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

Karen L. Strauss, Ruth Borenstein, Brad Jacklin, Dustin Hergert, Eileen Ma,  
Suyapa Portillo, Gerardo Marin, Jay Thomas, Sierra North, Celia Carter,  
Desmund Wu, James Tolen and Equality California,

Petitioners,

v.

Mark D. Horton, in his official capacity as State Registrar of Vital Statistics of the  
State of California and Director of the California Department of Public Health;  
Linette Scott, in her official capacity as Deputy Director of Health Information &  
Strategic Planning for the California Department of Public Health; and Edmund G.  
Brown, Jr., in his official capacity as Attorney General for the State of California,

Respondents.

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**PETITIONERS' OPPOSITION TO MOTION OF CAMPAIGN FOR  
CALIFORNIA FAMILIES TO INTERVENE AS RESPONDENT  
MEMORANDUM OF POINTS AND AUTHORITIES**

NOV 18 2008

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**PETITIONERS' MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO MOTION OF CAMPAIGN  
FOR CALIFORNIA FAMILIES TO INTERVENE AS  
RESPONDENT**

**I. Introduction**

The Campaign for California Families (“Campaign”) seeks to intervene as a Respondent in this original jurisdiction writ proceeding in order to defend the validity of Proposition 8 and to argue that it should continue to be enforced. This Court recently addressed this very issue, however, and concluded that a group such as the Campaign, whose only interest in the litigation is its strong ideological or philosophical support for a ballot initiative, does not have “the right to intervene formally in an action challenging the validity of the measure.” (*In re Marriage Cases* (2008) 43 Cal.4th 757, 790-791.) For this reason, the Court should deny the Campaign’s motion. Petitioners would not object to a request by the Campaign to file a brief as *amicus curiae*.<sup>1</sup>

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<sup>1</sup> A motion to intervene also has been filed by the official proponents of Proposition 8 and their campaign organization. Petitioners do not oppose the request *as to the official proponents*. For the reasons stated in this opposition, however, the Campaign for California Families lacks a sufficiently direct interest in this proceeding to support intervention. Unlike the official proponents, the Campaign stands in no different position from any other member of the general public with respect to the issues to be resolved in this action.

## **II. The Court Should Deny The Campaign's Motion Because It Lacks Standing To Intervene In This Dispute.**

Permissive intervention requires that the proposed intervener has an interest in the litigation that is direct rather than consequential and that is capable of determination in the action. (See *People v. Superior Court (Good)* (1976) 17 Cal.3d 732, 736.) This Court has held that an advocacy group does not have standing to support a ballot initiative in a challenge to that initiative's validity merely because the advocacy group strongly supports the challenged measure and believes it should be enforced. (*In re Marriage Cases, supra*, at pp. 789-792.) Rejecting similar attempts by both the Campaign and another group (the Proposition 22 Legal Defense and Education Fund) to participate as parties in the *Marriage Cases*, the Court stated:

Past California decisions establish . . . that notwithstanding an advocacy group's strong political or ideological support of a statute or ordinance — and its disagreement with those who question or challenge the validity of the legislation — such a disagreement does not in itself afford the group the right to intervene formally in an action challenging the validity of the measure. (See, e.g., *Socialist Workers etc. Committee v. Brown* (1975) 53 Cal.App.3d 879, 891-892, 125 Cal.Rptr. 915 [holding trial court did not err in rejecting Common Cause's request to intervene in action challenging statutes requiring disclosure of campaign contributions]; *People ex rel. Rominger v. County of Trinity* (1983) 147 Cal.App.3d 655, 662, 195 Cal.Rptr. 186 [rejecting Sierra Club's claim that its strong interest in the enforcement of county's environmental laws was itself sufficient to afford it standing to intervene in action challenging the validity of an ordinance prohibiting the spraying of a specified chemical].) For similar reasons, we agree with the Court of Appeal that, absent a showing by the Fund that it possesses a direct legal interest that will be injured or adversely affected (which the Fund

acknowledges has not been established here), the Fund's strong ideological disagreement with the City's views regarding the scope or constitutionality of Proposition 22 is not sufficient to afford standing to the Fund to maintain a lawsuit to obtain a declaratory judgment regarding these legal issues. (See, e.g., *Newland v. Kizer* (1989) 209 Cal.App.3d 647, 657, 257 Cal.Rptr. 450; *Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 662-663, 118 Cal.Rptr. 100.) In this respect, the Fund is in a position no different from that of any other member of the public having a strong ideological or philosophical disagreement with a legal position advanced by a public entity that, through judicial compulsion or otherwise, continues to comply with a contested measure.

(*Id.* at pp. 790-791.)

The Campaign is in the same position with respect to intervention in this action as it was with respect to the constitutional dispute in the *Marriage Cases*. The Campaign does not contend that it or any of its members has a direct legal interest that is affected by Proposition 8. It contends only that “the Campaign and its members have actively supported, worked for and encouraged people to vote for the amendment” and that the Campaign’s members were among those who voted for Proposition 8. (Declaration of Randy Thomasson in Support of Motion to Intervene, ¶¶ 7-8.)

As this Court has recognized, however, a strong political or philosophical interest in upholding an initiative, even if coupled with active involvement in the campaign to pass it, is not sufficient to support intervention for the purpose of defending its validity in a lawsuit challenging the initiative. (*In re Marriage Cases, supra*, at pp. 790-791;

see also *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1038-1039 [denying leave to intervene to Proposition 22 Legal Defense and Education Fund in action challenging the applicability and constitutionality of Proposition 22].) Likewise, to the extent the Campaign is arguing that it has standing to intervene to defend the interests of its members as voters who supported Proposition 8, the Campaign “has failed to cite a single state or federal case that either establishes or recognizes ‘voter standing.’” (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 751.)

The Campaign’s position is fundamentally different from that of the Petitioners in this proceeding. Petitioners seek a writ of mandate to compel public officials to refrain from implementing Proposition 8. Petitioners are directly affected by the question of whether a measure such as Proposition 8 can be adopted through the initiative process because they will be prevented from marrying if Proposition 8 is given effect. Affected persons and groups have standing to seek to compel performance of such public duties. (See Code Civ. Proc. § 1086; *Green v. Obledo* (1981) 29 Cal.3d 126, 144; *California Homeless & Housing Coalition v. Anderson* (1995) 31 Cal.App.4th 450, 457-458.). By contrast, the Campaign does not seek to compel any public officer to perform any duty that he or she currently is failing to perform. Instead, the Campaign is seeking to offer arguments in defense of the validity of Proposition 8 and its continued enforcement by government officials.



Nor does it matter for purposes of this motion that the Campaign pledges not to inject additional issues into this proceeding beyond those raised by Petitioners, or that it contends its involvement will not delay or otherwise interfere with the adjudication of Petitioners' claims. Because the Campaign lacks a sufficiently direct interest in the controversy to establish standing, intervention is impermissible irrespective of these factors. (See *City and County of San Francisco, supra*, at p. 1044 ["Having decided the Fund lacked a sufficiently direct and immediate interest to permit intervention, we need not address the parties' arguments regarding whether intervention would improperly enlarge the issues in the litigation and whether the rights of the original parties outweigh the reasons for intervention."].)

Similarly, it does not matter that the Campaign contends that its interests are not adequately represented by the existing parties. That factor does not support intervention if the proposed intervener lacks the necessary direct interest in the litigation. If the Campaign wishes to make arguments different from those that will be advanced by the Respondents, it may seek leave to file a brief as *amicus curiae*. (*Ibid.* [citing *Jersey Maid Milk Products Co. v. Brock* (1939) 13 Cal.2d 661, 665]; see also *In re Marriage Cases, supra*, at p. 792 fn.10.) Petitioners would not oppose such a request.

### **III. Conclusion**

For the reasons stated above, Petitioners respectfully urge this Court to deny the Campaign's motion to intervene as a Respondent in this proceeding.

Dated: Nov. 18, 2008

Respectfully submitted,

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## PROOF OF SERVICE

I, Joshua Delgado, declare that I am over the age of eighteen years and I am not a party to this action. My business address is 870 Market Street, Suite 370, San Francisco, CA 94102.

On November 18<sup>th</sup>, 2008, I served the document:


### **PETITIONERS' OPPOSITION TO MOTION OF CAMPAIGN FOR CALIFORNIA FAMILIES TO INTERVENE AS RESPONDENT; MEMORANDUM OF POINTS AND AUTHORITIES**

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- ☐ **BY PERSONAL SERVICE:** I caused the document(s) to be delivered by hand.
- ☒ **BY MAIL:** I am readily familiar with the business practice for collection and processing correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelopes were sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.
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### **INTERESTED PARTIES:**

### **SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; that this declaration is executed on November 18<sup>th</sup>, 2008, at San Francisco, California.

  
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Joshua Delgado

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